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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-1079

LUCY ELIZABETH BROOKS SCHANEFELT,
APPELLANT

v.

JOSEPH R. PARADISO,
APPELLEE

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF NEW MEXICO

ANSWER TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

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ARGUMENT

REPLY TO APPELLEE'S POINT A

A. 53 N.M.S.A., Sec. 29-1-15 cannot supercede the rights of an individual guaranteed by the Equal Protection Clause of the Fourteenth Amendment.

The Statute in question is 53 N.M.S.A., Sec. 29-1-15. It provides for inheritance by heirs of a predeceased wife if the deceased husband has no heirs. By its plain wording and in its previous application, it does not provide for inheritance by heirs of a predeceased husband if the deceased wife has no heirs.

Appellant has no quarrel with the general proposition that the disposition of property within its borders is a matter of state law and not a matter "placed under the control of Federal Authority." United States v. Fox, 94 US 315, 320-1 (1876); Mager v. Grima, 8 How 490, 493 (1850). Appellee set forth the holding

in Labine v. Vincent, 401 US 532 (1971), for the purpose of reaffirming the aforementioned principle. (P. 5, Motion to Dismiss or Affirm)

There, the statute forbade acknowledged illegitimate children the same rights as legitimate children when the father had died intestate. The statute was attacked upon Equal Protection grounds. As to the father's property, all descendants, ascendants, collateral heirs, and the surviving wife had priority over any illegitimate children. Such children only had priority over the state when there were no heirs of the decedent.

The statute was upheld as being valid and not in violation of the Equal Protection or Due Process Clauses. The rationale used to reach such a holding was that the state had plenary power to dispose of property within its borders. Id. at 537.

However, the holding in Labine is distinguished by two events which appellee failed to point out in his Motion to Dismiss or Affirm.

One, the decision in Labine was not a majority decision. Id. at 532. Justice Black expressed the opinion of four judges. Justice Harlan concurred with the majority for two other reasons--one, the Equal Protection Clause could not prohibit enforcement of marital obligations imposed by Louisiana law; two, even if the statute was declared unconstitutional, as the dissent would proclaim, this result would not have an affect on the outcome of the case, because the child was "natural" rather than illegitimate and the father could have provided for her by will. Id. at 540, 541.

With Justice Brennan expressing the minority opinion, Justices Brennan, White,

Douglas and Marshall dissented. The dissent was vigorous and was predicated upon the principle that the Louisiana Statute created an invidious discrimination against illegitimate children which was a violation of the Equal Protection Clause. Id. at 541.

Two, in Weber v. Aetna Casualty & Surety Co., 406 US 164, 170 (1972), the holding in Labine was distinguished when Justice Powell, expressing the views of seven members of the Court, noted that Louisiana had a substantial and legitimate state interest when the Court decided Labine. Justice Powell stated that the legitimate state interest in providing for stability of land titles and in prompt and definitive determination of the valid ownership of property left by decedents was not present in Weber.

In Weber, the Court declared that the Louisiana statute giving Workman's Com-

pensation benefits to the legitimate children of the decedent, while denying them to the illegitimate children, was unconstitutional. The Court stated that there was no legitimate interest in differentiating between legitimate and illegitimate children. The statute was in violation of the Equal Protection Clause. Id. at 176.

These two factors clearly lead to the conclusion that there are questions as to the holding of Labine. It is appellant's position that the holding in Labine has been modified by Weber. The modification, to the effect, that although the state has plenary powers in the regulation and disposition of property within the state, the state's use of such power cannot invidiously discriminate against the rights of an individual in violation of the Equal Protection Clause. Weber, Supra, at 175.

Appellee states that New Mexico is a Community Property state, and is concerned with regulating property rights incident to family life. (P. 5, Motion to Dismiss or Affirm)

Appellant agrees that New Mexico has an interest in its citizens' family relationships. However, it is appellant's position that this intestacy statute in no way furthers the purpose of keeping the family intact after both spouses are dead. Id. The cornerstone of a community property state is in its equality of property rights between the spouses. Beals v. Ares, 25 NM 459, 185 P 780 (1919) The only purpose of this statute appears to be to discriminate between the heirs of the spouses herein involved. The discrimination in this case is based upon a general sexual classification with no rationale or reasonable basis for such classification.

Appellee also urges that 53 N.M.S.A., Sec. 29-1-15 must be construed in pari materia with the other descent and distribution statutes. (P. 6, Motion to Dismiss or Affirm) Appellee cites In Re Gossett, 46 NM 344, 129 P 2d 56 (1942) for the above proposition. Appellant agrees with appellee's interpretation of In Re Gossett, Supra. However, appellant would point out to the Court that In Re Gossett was a New Mexico Supreme Court case deciding the question of whether an illegitimate child qualified as an heir under the pretermitted state statutes. The principle of pari materia was used only to interpret and apply the statute in question and not to decide its constitutionality. Id. at 58.

Appellee takes the position that 53 N.M.S.A., Sec. 29-1-8, giving the husband the entire community property upon the death of the wife, and Sec. 29-1-9,

giving the husband the power of testamentary disposition of half of the community property upon his death works an even greater discrimination upon the wife and her heirs. (P. 6, Motion to Dismiss or Affirm) Appellant, in reply, would state that the New Mexico legislature has remedied the discrimination of the above two statutes. Sec. 29-1-8 was repealed by Laws 1973, Ch. 276, §9. Sec. 29-1-9 was amended by Laws 1973, Ch. 276, §2 to provide that upon the death of one spouse the entire community property goes to the surviving spouse subject to the deceased's power of testamentary disposition over one-half of the community property.

Sec. 29-1-13 and 29-1-14 are also pointed out by Appellee as favoring the husband's heirs when the husband dies, leaving no wife and no issue. (P. 6, Motion to Dismiss or Affirm) However, the statutes in their application

and construction have been applied to both the husband and the wife dying without issue and unmarried. Harrison v. Harrison, 21 NM 372, 155 P 356 (1916). Therefore, if either the husband or wife die without issue and unmarried, the estate will pass to his or her parents, whichever may be the case. There is clearly no discrimination found in these statutes.

Appellee states that the appellant should not be heard to complain because the foregoing statutes favor the husband's heirs over the wife's heirs. Appellant states that because other portions of the intestacy act may be unconstitutional, this does not make the attacked portion any more constitutional. The statutes cited by appellee are not in question in the present case. They have no affect upon the constitutionality of 53 N.M.S.A., Sec. 29-1-15.

Neither appellee nor appellant can attack the cited statutes in the present case. The unconstitutionality of statutes discriminating against the heirs of Elizabeth J. Brooks is no justification for condoning or ignoring the unconstitutionality of the statute in question.

Appellant would further point out that Sec. 29-1-15 has also been amended by the legislature. The legislature, by its amendment, apparently recognized the discrimination against the husband's heirs where the husband predeceased his wife and she later died without heirs.

REPLY TO APPELLEE'S POINT B

B. 53 N.M.S.A., Sec. 29-1-15 violates the Equal Protection clause.

Appellee attacks the cases of Frontiero v. Richardson, 411 US 677 (1973); and Stanley v. Illinois, 405 US 645 (1972) as being not applicable to the case at bar. Appellant disagrees. As noted in the

Jurisdictional Statement, P. 11, the above cases are applicable because they both deal with classifications based upon gender alone where there was no rational or reasonable basis for such a classification.

Appellee also claims that appellant has ignored Ballard, Kahn, Forbush and McNair where sex-based classifications have arisen and have been upheld over equal protection attack. (P. 10, 11, Motion to Dismiss or Affirm) Appellant has not specifically cited these cases because they are not applicable to the case at bar. These cases are significant only because the statute in each case was upheld because the state had a legitimate purpose for the passage of the statute, and the statute was rationally related to that legitimate purpose. In the case at bar, there is no legitimate purpose for 53 N.M.S.A., Sec. 29-1-15, and

if there could be said to be one, the statute does not rationally relate to such a purpose.

In his Motion to Dismiss or Affirm, appellee states that the purpose in enacting Sec. 29-1-15 was to strike a balance as between the rights of heirs of a wife whose husband had predeceased her and the heirs of her husband. (P. 9, Motion to Dismiss or Affirm) However, appellee cites no case law or legislative intent holding that the statute was enacted for that purpose. Even if the state had such a purpose, the statute upon its face, and in application, does not rationally relate to such a purpose.

The case of Reed v. Reed, 404 US 71 (1971) is analogous to the case at bar. In Reed, an Idaho statute that gave preference to a male over a female seeking letters of administration of a decedent's estate was held to violate the Equal

Protection Clause. There was no legitimate state interest for the creation of such a preference. The Court stated that such a dissimilar treatment where men and women were similarly situated could not stand. Id. at 77. The case at bar is analogous to Reed, Supra, for the simple reason that, absent a legitimate state purpose, the husband's heirs, who were similarly situated with the wife's heirs, were treated in a dissimilar fashion.

The statute is also contrary to the overall scheme and purpose of the community property laws of the State of New Mexico. The very purpose being the symmetry of rights that each spouse enjoys, even after life, in his or her property, including, but not limited to, disposition upon death. Beals, Supra, at 790.

The statute serves no purpose other than to invidiously discriminate against

the heirs of a husband, where he has predeceased his spouse and she dies without heirs.

REPLY TO APPELLEE'S POINT C

C. This case presents a substantial federal question.

Appellee states that a reversal of the New Mexico Supreme Court would only permit appellant to raise issues that have already been decided by a jury. (P. 12, Motion to Dismiss or Affirm) However, appellant was never a party to the previous determination of the validity of Elizabeth J. Brooks' will by the jury prior to its admission to probate. 53 N.M.S.A., Sec. 30-2-13 gave appellant standing, if she was an heir, to contest the validity of the will within six (6) months after its admission to probate. However, the New Mexico District Court Judge ruled that appellant was not an heir of Elizabeth J. Brooks. Therefore,

under 53 N.M.S.A., Sec. 30-2-13, appellant had no standing to contest the validity of the will. (R. 16) Such a determination was predicated totally on the language and previous application of 53 N.M.S.A., Sec. 29-1-15, which precluded appellant from being an heir of Elizabeth J. Brooks.

In answer to appellee's contention that a decision in appellant's favor would create chaos to title to property in New Mexico, appellant would rely on 53 N.M.S.A. Sec. 30-2-13 which precludes any actions contesting the validity of wills where property is involved, six (6) months after probate. Furthermore, will contests arising after July 1, 1973, are governed by amendment. 53 N.M.S.A., Sec. 29-1-15, which says the portion of the estate uninherited shall go to the heirs of the deceased spouse of the intestate according to like rules. Thus, the heirs

of the predeceased spouse, husband or wife, whichever the case may be, are treated in a like manner.

The questions presented in this case are of greater public significance than merely the question of whether a decision will be rendered in appellant's favor. This case is concerned with a statute involving a sex-based classification which does or does not violate the Equal Protection Clause. A decision in this case would benefit all litigants who have similar questions regarding the validity of statutes where differences are based upon sex classifications.

Once and for all, the Court must decide whether a state has plenary power to make laws for the disposition of property found therein without regard to the Equal Protection Clause. Questions which deal with the very foundation upon

which the rights of an individual are protected from invidious discriminate state action are substantial and are of the upmost public significance.

CONCLUSION

For the reason that the discrimination is based upon a sex classification, which in this case is in violation of the Equal Protection Clause, and for the foregoing reasons, the appellant believes the Motion to Dismiss or Affirm submitted by the appellee should not be granted.

Respectfully submitted,

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PROOF OF SERVICE

I, WARREN F. REYNOLDS, counsel for Lucy Elizabeth Brooks Schanefelt, Appellant herein, and a member of the Bar of the Supreme Court of the United States hereby certify that on June 8, 1976, I served three copies of the foregoing Answer to Appellee's Motion to Dismiss or Affirm on opposing party thereto, Joseph R. Paradiso, Appellee, by mailing three copies in a duly addressed envelope, with airmail postage prepaid, to C. J. Head, Esq., counsel for Joseph R. Paradiso, Eleven Broadway, New York, New York 10004.

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